

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
WP(C) No. 797 of 2023

1. Bikramjit Debbarma, aged about 47 years, son of late Badal Debbarma,

.....Petitioner

_V_E_R_S_U_S_

1. The State of Tripura, to be represented by the Secretary, Department of Education, Government of Tripura,
2. Tripura Board of Secondary Education (To be represented by the Secretary, Tripura Board of Secondary Education) Government of Tripura,
3. The President, Tripura Board of Secondary Education Government of Tripura,
4. The Secretary, Tripura Board of Secondary Education Government of Tripura,
5. The Director, Secondary Education, Government of Tripura,

.....Respondents

BEFORE
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate. Mr. S. Bhattacharjee, Advocate. Mr. K. Nath, Advocate.
For Respondent(s)	:	Mr. D. Sarma, Addl. G.A. Mr. Ratan Datta, Advocate.
Date of hearing	:	28.11.2024
Date of delivery of judgment and order	:	29.11.2024
Whether fit for reporting	:	YES

JUDGMENT & ORDER

Heard P. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the petitioner also heard D. Sarma, learned Addl. G.A. and Mr. Ratan Datta, learned counsel appearing for the respondents.

[2] The present petition has been filed under Article-226 of the Constitution of India directing the respondents to pay the arrear pay and salary of the petitioner w.e.f. 13.07.2021 till date with interest and thereafter to continue to pay the pay and salary of the petitioner. Further, to sanction earned leaves of the petitioner w.e.f. 13.07.2021 to 31.07.2021.

[3] The facts in brief are that the petitioner filed this petition as the pay and salary has not been paying by the respondents w.e.f. 13.07.2021 to till date. Despite repeated representations, the petitioner has not been forwarded with the arrear pay and salary though the petitioner regularly attended his office and during such period, the petitioner is serving as Deputy Secretary, TBSE.

[4] Being aggrieved by and dissatisfied with the same, the present petition has been preferred before this Court for redress.

[5] The case of the petitioner is that he was working as Deputy Secretary in Tripura Board of Secondary Education [TBSE, for short] and for three consecutive time i.e. on 13.07.2021 to 31.07.2021, 16.12.2021 to 25.04.2023 and from 28.04.2023 to till date he was un-authorizedly absent according to the respondents and he has been issued a memorandum to which he has submitted his explanation. Again, not being satisfied the memorandum was issued to which he placed his explanation, the matter was referred to the disciplinary committee and the competent committee has resolved that he has committed grave irregularities and needs to be removed from his service. Accordingly, the same has been recommended and in which, the respondent has passed the termination order.

[6] Mr. P. Roy Barman, learned senior counsel assisted by the Mr. S. Bhattacharjee, learned counsel appearing for the petitioner has submitted that the order of termination which is passed is completely contrary to the eye of law as Article-14 has not been followed and also the principles of natural justice. It has been further contended that no opportunity was given to him for his proper explanation. He made an attempt to draw the attention of this Court to say that the show cause notice was issued with any proper enquiry being conducted by the respondents and no opportunity was given for his explanation.

[7] More so, his explanation was also not considered. Thus, the termination order was disproportionate and the same is contrary to Rule-10 of TBSE Rule and in support he placed reliance on some principles laid down by the Hon'ble Apex Court in *(i) Krushnakant B. Parmar v. Union of India and Another*, reported in (2012) 3 SCC 178, *(ii) D. K. Yadav v. J. M. A. Industries Ltd.* reported in (1993) 3 SCC 259, *(iii) State of Orissa v. Dr. (Miss) Binapani Dei and Another*, reported in AIR (1967) SC 1269 (V 54 C 264) and *(iv) Sandeep Kumar v. GB Pant Institute of Engineering and Technology Ghurdauri and Others, arising out of SLP (C) No.(s) 8788-8789 of 2023.*

[8] Hon'ble Apex Court in *Krushnakant B. Parmar v. Union of India and Another*, reported in (2012) 3 SCC 178, has held that:

“17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

18. In a Departmental proceeding, if allegation of un-authorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.

19. In the present case the Inquiry Officer on appreciation of evidence though held that the appellant was un-authorisedly absent from duty but failed to hold the absence is wilful; the disciplinary authority as also the Appellate

Authority, failed to appreciate the same and wrongly held the appellant guilty.”

[9] In **D. K. Yadav v. J. M. A. Industries Ltd.** reported in (1993) 3 SCC 259, the Hon’ble Apex Court observed as under:

“7. The principle question is whether the impugned action is violative of principles of natural justice. In *A.K. Kriepak and Ors. v. Union of India & Ors.*, [1969] 2 SCC 262 a Constitution bench of this court held that the distinction between quasi judicial and administrative order has gradually become thin. Now it is totally clipped and obliterated. The aim of the rule of the natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules operate in the area not covered by law validly made or expressly excluded as held in *Col. J.N. Sinha v. Union of India & Anr.* [1971] 1 SCR 791. It is settled law that certified standing orders have statutory force which do not expressly exclude the application of the principles of natural justice. Conversely the Act made exceptions for the application of principles of natural justice necessary implication from specific provisions in the Act like Ss.25F; 25FF; 25FFF; etc, the need for temporary hands to cope with sudden and temporary spurt of work demands appointment temporarily to a service of such temporary workmen to meet such exigencies and as soon as the work or service are completed, the need to dispense with the services may arise. In that situation, on compliance of the provisions of s. 25F resort could be had to retrench the employees in conformity therewith particular statute or statutory rules or orders having statutory flavour may also exclude the application of the principles of natural justice expressly or by necessary implication. In other respects the principles of natural justice would apply unless the employer should justify its exclusion on given special and exceptional exigencies.

8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely’ the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person.

9. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and be given him/ her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner & Ors.* [1978] 2 SCR 272 at 308F the Constitution Bench held that ‘civil consequence’ covers infraction of not merely property or personal right but of civil liberties, material deprivations and non- pecuniary damages. In its comprehensive connotation everything that affects a citizen in his civil life inflicts a civil consequence. Black’s Law Dictionary, 4th Edition, page 1487 defined civil rights are such as belong to every citizen of the state or country they include rights capable of being enforced or redressed in a civil action. In *State of Orissa v. Dr. (Miss) Binapani Dei & Ors.*, this court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must

be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

11. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of and such law would be liable to be tested on the anvil of Art. 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Art. 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial enquiry and not to administrative enquiry. It must logically apply to both.”

[10] In ***State of Orissa v. Dr. (Miss) Binapani Dei and Another***, reported in ***AIR (1967) SC 1269 (V 54 C 264)*** the Hon’ble Apex Court has observed as under:

“It is true that some preliminary enquiry was made by Dr. S. Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. The latter the first respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken; the High Court was, in our judgment, right in setting aside the order of the State.”

[11] Per contra, Mr. Ratan Datta, learned counsel appearing for the respondents has supported the order of termination since the respondent was being responsible officer at the level of Deputy Secretary, TBSE, he ought to have set an example before the department for being a noble officer but instead, he misled the department and he was un-authorizedly absent. He further contended that opportunity was given to the petitioner and Article-14 was followed by issuing show cause notice wherein, his explanation was considered. Even before the committee also, opportunity was given to him before passing the order. Full and proper opportunity has been provided to

the petitioner and the authority had strictly followed the Rules and Regulations of TBSE at the time of passing the order dated 21.01.2024.

[12] The opportunity of personal appearance was also given and in his personal appearance he stated that whatever he wanted to say he had given already in black and white writing towards his explanation. Thereafter, the order of termination was passed and thus, the order passed in compliance of Rule-10 of TBSE Rule. It has been further contended that the respondent was competent enough to decide the issue but Mr. Roy Barman, learned senior counsel appearing for the petitioner has submitted that the principle laid down under Section-29 has not been followed.

[13] According to him, the committee was not competent enough to pass termination order, but, according to this Court it is not necessary as the principle laid down in ***Life Insurance Corporation of India and Others v. OM Prakash in Civil Appeal No.4393 of 2010*** wherein, it has been held the officer who has abandoned the office requires no consideration and prayed to dismiss the writ petition in limine. For the purpose of reference, the relevant paragraphs may be reflected hereinbelow:

“11. Relief was granted to the respondent by the High Court on the ground that the termination order was passed without affording a reasonable opportunity or conducting an inquiry into the charge of absence from duty. But in granting such relief, the Court overlooked that it was a case of the respondent abandoning his services without informing his employer about his whereabouts. Subsequently, it came to light that he joined the FCI on 09.05.1997.

12. Such conduct of the respondent could not have been condoned by the employer and therefore, in our assessment, treating the respondent to have abandoned his service and taking appropriate action against him, in terms of the LIC Staff Regulation, cannot be faulted. It is also necessary for us to say that as the delinquent was guilty of suppression of the fact of his employment with the FCI, he was disentitled to equitable relief from the High Court in exercise of powers under Article-226 of the Constitution.”

[14] Prima facie, the question falls before this Court whether there was any unauthorized absence and whether the termination order which is passed is passed by following the principles of natural justice by giving him reasonable opportunity. So admittedly, it is seen from the record that on 13.07.2021 to 31.07.2021, 16.12.2021 to 25.04.2023 and from 28.04.2023 to

till date the petitioner was absent and the said absenteeism was unauthorized and including the said period also he not to chosen to attend the office and indicate that he has also not placed on record by way of any affidavit of his office colleagues or details of relevant files he attended or attendance register or even to say that he was present in the office and he has also not led any other oral evidence or any other documentary evidence his office colleague and thus, it cannot be construed that he was regularly attending the office on the alleged 3 spells of period.

[15] Now, other issue falls for consideration whether the principles of natural justice was followed and whether the signatory of the termination order is under Rule-10 of Tripura Board of Secondary Education, 1982 or Section-29 of 1973 Act. More than, two opportunities were given to him by way of show cause notice calling his explanation vide memo dated 30.10.2023 and dated 28.11.2023 to which he has submitted his explanation and finally personal hearing was also afforded and thereafter, the order has been passed. The said order was passed by the competent authority under Rule-10 and since, Rule-10 has been followed, there was no violation of principles of natural justice and the power under Section-29 that the Government has not pass the order is un-warranted and the said order is well within the ambit of the competent authority.

[16] Finally, for any un-artistic drafting by any concern clerk or by any officer, the petitioner cannot take the advantage of such un-artistic drafting. The essence of the case is whether the petitioner was unauthorizedly absent and whether reasonable opportunity was given to him or not. In such a case, this Court is convince with the argument of Mr. Ratan Datta, learned counsel appearing for the respondents on both the points and the present writ petition is liable to be dismissed.

[17] In that view of the matter, the writ petition stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed.

T. AMARNATH GOUD, J